

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR**  
**BENCH, JAIPUR.**

**J U D G M E N T**

Shanti Bai and ors.                      Vs.                      Smt.Parvati Bai and ors.

S.B. CIVIL FIRST APPEAL No.111/1987  
against the judgment & decree dated  
21.2.1987 passed by the ADJ No.1,  
Kota, in Civil Suit No.82/1981.

Date of Judgment                      ::                      January\_\_, 2007

**PRESENT**  
**HON'BLE DR. JUSTICE VINEET KOTHARI**

Mr. Sanjay Mahrishi, for the appellants.  
None present for the respondents.

**BY THE COURT:**

1. This first appeal of plaintiffs' is directed against the Judgment and decree dated 21.2.1987 rejecting the civil suit no.82/1981 filed by two plaintiffs.

2. The facts leading to the filing of the suit and the present appeal in brief are that these two plaintiffs Smt.Shanti Bai and Smt.Sharda Bai are married daughters of late Nathulal who died on 1.2.1977. During his life time, he contacted a "Nata" marriage with defendant no.1 Smt.Parvati Bai who is also said to have expired during the pendency of this appeal on 1.7.2004. The said "Nata" marriage with defendant no.1 Parvati Bai was her second marriage and from her previous marriage, she had a son

Babulal who pre-deceased her leaving behind a widow Smt.Dev Bai, defendant no.1 and four sons defendant no.2 Satya Narayan, defendant no.3 Ram Prasad, defendant no.4 Satya Prakash and defendant no.5 Ram Swaroop.

3. According to the plaintiffs, their father Nathulal, during his life time on 12.1.1974 executed a Will in respect of his residential house, the suit property and Bank account No.2586 with Bank of Rajasthan, and according to said Will, the ground floor of the said residential house was given to two daughters, the present two plaintiffs. The northern portion was given to Smt.Sharda and southern portion was given to Smt.Shanti Bai and the upper floors, first and second were given to the grand-son Ram Prasad, defendant no.3 subject to the condition that he would maintain and serve his grandmother Parvati Bai and mother Dev Bai, widow of Babulal. According to the Will, it is not in dispute that the said Nathulal directed that these two ladies, his wife Parvati Bai and his son's wife Dev Bai will have pre-emptive right to live in that residential house during their life time. The plaintiffs approached the trial court with the prayer that defendant nos.1 to 5 were allowed to use the ground floor of the said residential house as licensee for a period of two years in pursuance of agreement dated 23.2.1977 which took place between the parties soon after the death of Nathulal on 1.2.1977 and after the expiry of

said two years also, when the possession of these two portions of the ground floor of the house was not handed over to the plaintiffs and the defendant no.3 Ram Prasad had given one of the portions even in tenancy, the present suit for possession, injunction against the defendants and mesne profits was filed before the trial court.

4. The defendant nos.1,2 and 6 filed the written statements and contested the suit. They however did not raise any contest about the Will. However they denied the agreement Ex.1.

5. On the basis of pleadings of the parties, the learned trial court framed the following issues:

(i)Whether the plaintiffs are entitled to get the possession of the portion of the suit property as stated in para no.5 of the plaint according to the Will?

(ii)Whether the parties entered into an agreement on 23.2.1977?

(iii)Whether the plaintiffs are entitled to mesne profits or damages for use of portions of property @ 100/- per month from 23.2.77?

(iv)Whether the defendants stopped the plaintiffs from using their portions of the said property and, therefore, the plaintiffs are entitled to permanent injunction in this regard?

(v)Whether the agreement dated 23.2.1977 being not registered is invalid and what is the effect of the same on the suit?

(vi)Relief?

6. The plaintiffs-appellants examined Smt.Sharda, Smt.Shanti, Gyarsi Lal, and Mohan Lal as plaintiffs' witnesses; whereas Parvati Bai, Dev Bai, and Ram Prasad were examined as defence witnesses. Ex.1 is the agreement dated 23.2.1977, Will is Ex.2, notice given by the plaintiffs is Ex.3 and letter & reply thereof are Ex.4.

7. The learned trial court dismissed the suit by holding, while deciding issue nos.3,4 and 6 jointly, that since in the Will Ex.2 there is condition that these two ladies Parvati Bai and Dev Bai will not be dispossessed from the said house and it was not clear as to in which portion of the house, they were living, therefore, the plaintiffs were not entitled to be given possession of their portions on the ground floor so long as these two ladies survived.

8. None appears on behalf of respondents in this appeal despite service, to argue the case.

9. I have perused the pleadings and evidence available on record and heard learned counsel for the appellants.

10. Admittedly, the Will Ex.2 which is not in dispute, the plaintiffs were given their respective shares on the ground floor of the said residential house; whereas remaining portions of the house i.e. first floor and second floor were given to one of the grand-son i.e. Ram Prasad to whom movable property like utensils were also given. The bank balance was divided equally between all the children and grand-children namely two daughters, plaintiffs and four grand-sons. The wife Parvati Bai and pre-deceased son's wife Dev Bai were given the right to live in the said house and Ram Prasad in whose favour two floors were bequeathed, was given the responsibility of providing food and clothes to these two ladies. A reading of the said Will along with Ex.2 as also statements of PW-1 Smt.Sharda Bai and PW-4 Mohanlal shows that said Ram Prasad along with two ladies Parvati Bai and Dev Bai were already living in the first and second floor of the said house even during the life time of Nathulal and on the ground floor, Nathulal himself was living and in another portion, some goods of Ram Prasad are lying. PW-4 has also stated that in one of the portions, some tenant was

living. Even DW-3 Ram Prasad himself has admitted that on the ground floor, in one part, one tenant was living and in one of the rooms, luggage of his mother and grandmother namely Parvati Bai was lying. This appears to be a camouflage defence merely to show that these two ladies were living or their luggage was at the ground floor. The stipulation made in the Will itself shows that Ram Prasad was living on the first and second floor of the said house and, therefore, both these floors were given to him on the condition of maintaining his mother and grandmother. Therefore, obviously these two ladies were living with him on this first and second floor only. Even Parvati Bai DW-1 has admitted in her cross-examination that the arrangement of her food and meal etc. was made in the upper floor of the house. The denial of the agreement Ex.2 which bears signatures of all the four grand-sons of Nathulal and plaintiffs merely to deny their claim is unworthy of any acceptance and it appears that these four children of Babulal who was son of Smt.Parvati Bai, whereas the plaintiffs were daughters of Nathu Lal from his earlier wife and merely to defeat their right, they have ultimately put-up the false defence of these two ladies Parvati Bai and Dev Bai living on the ground floor; whereas the intention of Nathulal who made the Will, which is not disputed by the defendants, was that the ground floor should be divided and given half portion each to these two plaintiff

daughters.

11. Thus on the basis of evidence available on record, it is clear that the learned trial court has erred in not appreciating the Ex.1 Will in correct perspective which in the opinion of this court read with Ex.2 Agreement and statements of various witnesses, proved beyond doubt that these two plaintiff-daughters were entitled to their respective shares in ground floor of the said residential house in question.

12. Accordingly, this appeal is allowed. The Judgment and decree under appeal dated 21.2.1987 is set aside and the suit filed by the plaintiffs is decreed with costs in accordance with law.

**(Dr.VINEET KOTHARI),J.**

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